



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
ACTING DIRECTOR

BOARD OF PESTICIDES CONTROL

September 15, 2006
Colby Thomas Rooms, Hampton Inn
425 Kennedy Memorial Drive, Waterville
(Exit 127 from I-95)

MINUTES

9:30 A.M.

- ☒ Chairperson Eckert called to the meeting to order at approximately 9:35 a.m. Jemison, Humphreys, Eckert, Stevenson, and Walton were present.

1. Introductions of Board and Staff

- ☒ The Board and Staff introduced themselves.

2. Minutes of the July 21, 2006 Board Meeting

Action Needed: Amend and/or Approve

Presentation By: Henry Jennings
Acting Director

- ☒ Jemison/Walton: Moved and seconded approval of the minutes

In favor: Unanimous

3. Development of Technical and Stakeholder Committees to Address Aerial Application Issues

At the July 21, 2006 Board Meeting, Board Members reviewed the results of their priority voting for discretionary tasks identified at the annual planning session. Aerial application issues were the top priority. Consequently, the Board directed the staff to develop recommendations for two committees to address aerial application issues. The staff will review their recommendations with the Board.

Presentation By: Lebelle Hicks
Toxicologist

Action Needed: Determine Composition and Mandate for Both Committees

- ☑ Hicks reviewed the staff memo of September 6, 2006 in which several questions were posed to the Board and two tables of possible committee members were outlined. Members elected to focus on the composition of the technical committee first and develop the stakeholders committee at a future meeting.

There was considerable discussion on the scope of the project and whether it should focus on aerial spraying or drift in general. Staff pointed out that a shift to ground equipment may be one consequence of the Board actions. Most members felt that trying to look at drift in general would become an enormous task. Consensus was reached that the technical committee should focus on aerial application, with some limited consideration of ground alternatives only when necessary.

Members agreed that the technical committee needed to be chaired by a BPC staff member and Hicks agreed to assume that role. They further agreed that the technical committee should get underway first with the idea that their findings would be valuable to the stakeholder committee.

Members discussed the composition of the technical committee. Hicks suggested a small core committee with a larger group on the mailing list. Guest speakers may be invited to assist from time to time. Hicks recommended the core include the following members: Dan Simonds, Jim Dill, Dick Bradbury, Andy Berry, Eric Sideman, Mike Lavoie, Ron Lemin and Hicks. Consensus was reached to accept Hicks' recommendations. She will contact the core members and begin looking for dates in October and November.

4. Review of Public Record from the Browntail Moth Public Information Gathering Meeting and Discussion of Legislative Report Due January 2, 2007

Public Law 2006, Chapter 553 requires the Board to complete an assessment of risks and benefits from applying pesticides near marine waters for control of the browntail moth and report its findings and recommendation to the legislature by January 2, 2007. In response, the Board held a public information gathering meeting in Freeport on July 21, 2006 where four people testified. In addition, eleven people submitted written comments. The Board will review the comments and begin discussing the content of the report to the legislature.

Presentation By: Henry Jennings
Acting Director

Action Needed: Direct Staff on Developing Report to the Legislature

- ☑ Jennings stated the ERAC meeting had been very successful in forming consensus and suggested that Humphreys and Hicks were in a better position to address this topic. Hicks directed members to a memo summarizing the results of the ERAC meeting on September 13, 2006. The memo details recommendations that would ask the legislature to continue the current restriction for another year with a few revisions: add mist blowers

to the list of equipment that can be used in the area between 50 and 250 feet from the mean high tide mark, require that winds be at least 3 miles per hour away from the water and add an exemption for use of non-powered equipment used by licensed applicators for the 50 foot zone. The Board would then initiate rulemaking to codify the restrictions in rule for the long term. Consensus was reached that the staff should draft a report to the legislature for review at the next meeting.

5. Review of Draft Language to Prohibit Unauthorized Pesticide Applications

At their 2004 and 2005 annual planning sessions, the Board agreed there was a need to codify their long-standing position that it is unlawful to apply a pesticide to the property of another without proper consent. The staff developed some initial language which was reviewed at the July 21, 2006 Board Meeting. Board members directed the staff to make allowances for easements and add language to address concerns related to contracts with indefinite terms.

Presentation By: Henry Jennings
Acting Director

Action Needed: Decision on Appropriate Language to Take to Rule-Making

- ☒ Jennings directed members to a memo that contained the revised regulatory language that would codify the Board's position that it is unlawful to apply pesticides on the land of another without consent. Revisions were made to exempt maintenance of easements and to require a written agreement when ongoing, periodic commercial applications are to be performed.

Most of the discussion centered on the proposal that allows a customer to terminate a written contract orally. Stevenson stated it was common practice to require written termination of written contracts and felt there was a potential for customers wishing to avoid payment to claim they had terminated the contract orally. He further stated that many of their commercial contracts are written by the customer. Many members felt it was too burdensome to require that a customer write a letter to cancel an agreement. Meserve questioned whether agricultural spraying should be included, pointing out that these often involve informal oral agreements. Jennings suggested it may be appropriate to remain silent on how written agreements may be terminated.

Stevenson/Humphreys: Moved and seconded that the last sentence on terminating contracts be deleted and that Section D requiring written agreements apply only to non-agricultural applications.

In Favor: Unanimous

6. Review of Draft Language to Provide a Hardship Waiver Mechanism for the Fee Associated with the Maine Pesticide Notification Registry

At the July 21, 2006 Board Meeting, Board Members reviewed the results of their annual planning session and prioritization process. Developing a waiver mechanism for the fee associated with the Maine Pesticide Notification Registry was their number three priority. At that meeting, members directed the staff to develop draft language for review and future rule-making. The staff has worked with the Assistant Attorney General Randlett to develop draft waiver language modeled after provisions in the Animal Welfare Board laws.

Presentation By: Henry S. Jennings
Acting Director

Action Needed: Decision on Appropriate Language to Take to Rule-Making

- ☒ Members reviewed the draft regulatory language intended to allow the fee for the Pesticide Notification Registry to be waived when an economic hardship exists. Jennings pointed out a typo: the word “with” should have been “which” on the second line of the new language. Some discussion ensued over whether proof of an economic hardship would be required. Darren Hammond stated he believed that type of financial information needs to be confidential. Eckert questioned if the staff would be able to grant the waiver.

Humphreys/Jemison: Moved and seconded that the proposal be brought to rule with the typo corrected and the added provisions that the staff be allowed to grant waivers.

In Favor: Unanimous

7. Review of Draft Report for the 2006 Ground Water Monitoring of Hexazinone

The Board’s staff has conducted programs to monitor wells near blueberry growing areas for hexazinone at four-year intervals since 1994. The staff will review the results of the 2006 monitoring program and seek Board input and acceptance.

Presentation By: Heather Jackson
Water Quality Specialist

Action Needed: Amend and/or Accept the Report

- ☒ Jackson directed members to the 2006 Ground Water Monitoring of Hexazinone report. She summarized the results by indicating that the concentrations and frequency of detections remain relatively stable. Humphreys questioned why the sampling was conducted in the late winter, pointing out that residues may be higher in late summer. Jennings explained the sample timing is based partly on time series work done on aldicarb and partly on the availability of the compliance staff to assist. The consensus view is that concentrations of pesticides in Maine are highest when the water table is lowest, generally late winter or late summer.

Jemison expressed disappointment that the trends weren't showing a gradual decline in the frequency or concentrations. Considerable effort has been put into promoting best management practices. He asked whether any of the alternatives were showing promise such as mesotrione. David Bell of the Maine Blueberry Commission stated that research on alternatives continues to be a priority.

Walton/Humphreys: Moved and seconded that the Board accept the report.

In Favor: Unanimous

8. Update of Board Planning Session Priorities

The staff will review the Board's 2006 Planning Session priorities, progress to date and seek input about which priorities to address next.

Presentation By: Henry Jennings
Acting Director

Action Needed: Provide Input to Staff on Next Tasks to Address

- ☒ Jennings asked Board members to focus on two legislative proposals described in the memo attached to item eight. The proposal to require a commercial applicator's license for treatments at food handling establishments was reviewed, together with comments forwarded by Richard Grotton of the Maine Restaurant Association. Members agreed that exempting applications made under directions from a licensed applicator may be too complex to put into statute. The statutory definition of custom application already allows the Board to exempt certain classes of applications through rulemaking. Accordingly, the Board agreed to go ahead with the original proposed language and deal with any exemptions through rulemaking.

Humphreys/Jemison: Moved and seconded that the proposed change to the definition of custom application be forwarded as a Department bill.

In Favor: Unanimous

- ☒ The Board then discussed their proposal to relax the statutory restrictions on the use of pesticides to control vertebrate pests. Maine's statutes restrict the use of poisons to controlling rats and mice and certain birds when inside a structure. Many pesticides are registered for control of other rodents, a number of bird species – whether indoors or outdoors - and a variety of other vertebrates under controlled conditions.

Board members discussed the controversial and complicated nature of such an initiative and voiced reservations about taking on another controversial issue in light of their upcoming work on aerial spraying. Consensus was reached to request that the Department withdraw the bill at this time.

9. Other Old or New Business

a. ERAC Update – L. Hicks

☒ This topic was covered under item 4.

b. Lawn BMP Committee Update – G. Fish

☒ Jemison stated that the committee was close to finalizing the draft BMPs with the next meeting scheduled for September 18. The final BMPs should be ready for Board review by the end of the year.

c. Legislative Update – H. Jennings

☒ This topic was covered under item 8.

d. Variance Granted to the City of Bangor to Control Weeds Under Guardrails and Woody Brush Along City Streets and Roads – H. Jennings

☒ Jennings alerted the Board that the staff had granted a variance to the City of Bangor for roadside weed control. The staff has been directed to process repeat variance requests as long as no major problems were encountered in the past.

10. Schedule and Location of Future Meetings

October 13, 2006 is the tentative date for the next Board Meeting

☒ Board members agreed that Waterville is the best location to accommodate everyone's travel.

Additional Dates:

☒ Board members set the dates of November 17 and December 15 for future meetings.

11. Adjourn

☒ Jemison/Walton: Moved and seconded for adjournment at 1:08 p.m.

In Favor: Unanimous

Signed

Henry Jennings
Acting Director